

REMARKS

Applicants respectfully request reconsideration of the subject matter identified in caption, pursuant to and consistent with 37 C.F.R. §1.116, and in light of the remarks which follow.

Claims 9 and 10 are pending in the application.

Turning now to the Official Action, Claims 9 and 10 stand rejected under 35 U.S.C. §112, first paragraph, as containing subject matter not adequately described in the specification. For at least the reasons that follow, withdrawal of the rejection is in order.

The Official Action asserts that there are two outstanding issues with respect to Applicants deposit. In particular, the Official Action asserts that Applicants have not: (1) shown that the Imtec depository is a “fully recognized depository;” and (2) provided an appropriate statement concerning availability of the deposit.

With respect to the first issue, Applicants have provided the attached depository listing taken from PCT Applicant's Guide – Volume 1- Annex L, which was updated on May 6, 2004. Page 19 of the Annex lists the Imtec depository as an institution “having acquired the status of international depository authority under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.” Applicants submit that this listing proves that the Imtec depository is “fully recognized.”

With respect to the second issue, Applicants hereby submit that their deposit of “*Bacillus sp.* IICT 01” (specimen no. SI (5-9-88) Herb. IMI No. B12681) is publicly available and that all restrictions on the availability of the public deposited material will be irrevocably removed on the grant of the patent on this application.

In view of the attached listing, showing that the Imtec depository is "fully recognized," and Applicants' above statement concerning the availability of the deposit, Applicants respectfully request reconsideration and withdrawal of the §112, first paragraph, rejection of claims 9 and 10.

From the foregoing, Applicants earnestly solicit further and favorable action in the form of a Notice of Allowance.

If there are any questions concerning this paper or the application in general, Applicants invite the Examiner to telephone the undersigned at the Examiner's earliest convenience.

Respectfully submitted,

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Date: June 4, 2004

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ATTACHMENT: Listing of Depository Institutions (PCT Applicant's Guide – Volume I – Annex L, pages 17-19 (6 May 2004))

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PCT Applicant's Guide - Volume I - Annex L¹

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Deposits of Microorganisms and Other Biological Material

List of depositary institutions

Note: This table does not indicate in relation to depositary institutions the kinds of microorganisms or other biological material which may be deposited with and the fees charged by them. This information may be obtained directly from the institutions. As regards depositary institutions which have acquired the status of international depositary authority under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, such information is published at the time of the acquisition of the status of international depositary authority in the WIPO monthly review *Industrial Property and Copyright*. Furthermore, the January issue of the said review indicates, for each international depositary authority, the kinds of microorganisms and other biological material that it accepts and the fees charged by it. For more detailed information, see the *Guide to the Deposit of Microorganisms under the Budapest Treaty*.

Advanced Biotechnology Center (ABC)¹
Interlab Cell Line Collection
(Biotechnology Dept)
Largo Rossana Benzi, 10
16132 Genova
Italy

Agricultural Research Service Culture Collection
(NRRL)¹
1815 North University Street
Peoria, Illinois 61604
United States of America

American Type Culture Collection (ATCC)¹
10801 University Blvd.
Manassas, Virginia 20110-2209
United States of America

Australian Government Analytical Laboratories
(AGAL)¹
1, Suakin Street
Pymble, N.S.W. 2073
Australia

Belgian Coordinated Collections of
Microorganisms (BCCMTM)¹

Headquarters:

Prime Minister's Services
Federal Office for Scientific, Technical and
Cultural Affairs (OSTC)
Rue de la Science 8
B-1000 Brussels
Belgium

Collections:

Institut scientifique de la Santé publique -
Louis Pasteur
Section Mycologie (BCCMTM/IHEM)¹
14, rue J. Wytman
B-1050 Brussels
Belgium

Vakgroep voor Moleculaire Biologie -
Plasmidencollectie (BCCMTM/LMBP)¹
Universiteit Gent
K.L. Ledeganckstraat 35
B-9000 Gent
Belgium

Laboratorium voor Microbiologie -
Bacteriënverzameling (BCCMTM/LMG)¹
Universiteit Gent
K.L. Ledeganckstraat 35
B-9000 Gent
Belgium

Mycothèque de l'Université Catholique de
Louvain (BCCMTM/MUCL)¹
Place Croix du Sud 3
B-1348 Louvain-la-Neuve
Belgium

National Microbiology Laboratory, Health
Canada (NMLHC)¹
Canadian Science Centre for Human
and Animal Health
1015 Arlington Street
Winnipeg, MB
Canada R3E 3R2

Centraalbureau voor Schimmelcultures (CBS)¹
Uppsalalaan 8
NL-3584 CT Utrecht
or
P.O. Box 85167
NL-3508 AD Utrecht
Netherlands

China Center for Type Culture Collection (CCTCC)¹
Wuhan University
Wuhan 430072
China

China General Microbiological Culture Collection
Center (CGMCC)¹
China Committee for Culture Collection of
Microorganisms
P.O. Box 2714
Beijing 100080
China

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¹ Depositary institution having acquired the status of international depositary authority under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

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Deposits of Microorganisms and Other Biological Material

List of depositary institutions [Continued]

Colección Española de Cultivos Tipo (CECT)¹
Universidad de Valencia
Edificio de Investigación
Campus de Burjassot
46100 Burjassot (Valencia)
Spain

Collection nationale de cultures de
micro-organismes (CNCM)¹
Institut Pasteur
28, rue du Dr Roux
75724 Paris Cedex 15
France

Collection of Industrial Microorganisms¹
Institute of Agricultural and Food
Biotechnology (IAFB)
Ul. Rakowiecka 36
02-532 Warsaw
Poland

Collection of Industrial Yeasts (DBVPG)¹
Applied Microbiology Section
Department of Plant Biology
Faculty of Agriculture
University of Perugia
Borgo 20 Giugno, 74
06122 Perugia
Italy

Culture Collection of Algae and Protozoa (CCAP)¹
Institute of Freshwater Ecology
Windermere Laboratory
Far Sawrey
Ambleside, Cumbria LA22 0LP
United Kingdom
and
Dunstaffnage Marine Laboratory
P.O. Box 3
Oban, Argyll PA34 4AD
United Kingdom

Culture Collection of Yeasts (CCY)¹
Institute of Chemistry
Slovak Academy of Sciences
Dúbravská cesta 9
842 38 Bratislava
Slovakia

Czech Collection of Microorganisms (CCM)¹
Masaryk University
ul. Tvrdeho 14
602 00 Brno
Czech Republic

DSMZ-Deutsche Sammlung von Mikroorganismen
und Zellkulturen GmbH (DSMZ)¹
Mascheroder Weg 1b
D-38124 Braunschweig
Germany

European Collection of Cell Cultures (ECACC)¹
Vaccine Research and Production Laboratory
Public Health Laboratory Service
Centre for Applied Microbiology
and Research
Porton Down
Salisbury, Wiltshire SP4 0JG
United Kingdom

Institute for Fermentation (IFO)
17-85 Juso-honmachi 2-chome
Yodogawa-ku
Osaka 532-0024
Japan

Institute of Applied Microbiology (IAM)
Culture Collection
Center for Cellular and Molecular Research
Institute of Molecular and Cellular Biosciences
The University of Tokyo
1-1 Yayoi, 1-chome, Bunkyo-ku
Tokyo 113-0032
Japan

CABI BIOSCIENCE, UK Centre (IMI)¹
Bakeham Lane
Englefield Green
Egham, Surrey TW20 9TY
United Kingdom

International Patent Organism Depository (IPOD)
National Institute of Advanced Industrial
Science and Technology (AIST)
AIST Tsukuba Central 6, 1-1, Higashi 1-chome
Tsukuba-shi, Ibaraki-Ken 305-8566
Japan

Korean Collection for Type Cultures (KCTC)¹
52, Oun-dong,
Yusong-Ku,
Taejeon 305-333
Republic of Korea

Korean Cell Line Research Foundation (KCLRF)¹
Cancer Research Institute
Seoul National University College of Medicine
28 Yungon-dong, Chongno-gu
Seoul 110-799
Republic of Korea

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¹ Depositary institution having acquired the status of international depositary authority under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

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Deposits of Microorganisms and Other Biological Material

List of depositary institutions (Continued)

Korean Culture Center of Microorganisms (KCCM)¹
361-221, Yurim B/D
Honje 1, Sodaemun
Seoul 120-091
Republic of Korea

Laboratorium voor Microbiologie (NLM)
Julianalaan 67a
Delft
Netherlands

Microbial Strain Collection of Latvia (MSCL)¹
University of Latvia
Faculty of Biology
Blvd. Kronvalda 4
LV-1586 Riga
Latvia

Microbial Type Culture Collection & Gene Bank
(MTCC)¹
Institute of Microbial Technology (IMTECH)
Sector 39 A
Chandigarh 160 036 (Union Territory)
India

National Bank for Industrial Microorganisms and Cell
Cultures (NBIMCC)¹
125, Tsarigradskochoussee Blvd.
Block 2
1113 Sofia
Bulgaria

National Collection of Agricultural and Industrial
Microorganisms (NCAIM)¹
Budapest University of Economics and
Public Administration
Faculty of Food Sciences
Somlói út 14-16
H-1118 Budapest
Hungary

National Collection of Type Cultures (NCTC)¹
Central Public Health Laboratory
61 Colindale Avenue
London NW9 5HT
United Kingdom

National Collection of Yeast Cultures (NCYC)¹
AFRC Institute of Food Research
Norwich Laboratory
Colney Lane
Norwich NR4 7UA
United Kingdom

National Collections of Industrial, Food and
Marine Bacteria (NCIMB)¹
23 St. Machar Drive
Aberdeen AB24 3RY
Scotland
United Kingdom

National Institute of Technology and Evaluation,
Patent Microorganisms Depository (NPMD)
2-5-8 Kazusakamatari
Kisarazu-city
Chiba 292-0818
Japan

National Research Center of Antibiotics (VNHA)¹
Nagatinskaya Street 3-a
Moscow 113105
Russian Federation

Phabagen Collection (PC)
Rijksuniversiteit Utrecht
Vakgroep Moleculaire Celbiologie
Padualaan 8
3584 CH Utrecht
Netherlands

Polish Collection of Microorganisms (PCM)¹
Institute of Immunology and Experimental Therapy
Polish Academy of Sciences
Ul. Weigla 12
53-114 Wroclaw
Poland

Russian Collection of Microorganisms (VKM)¹
Prospekt Naouki, 5
142292 Puschino (Moscow Region)
Russian Federation

Russian National Collection
of Industrial Microorganisms (VKPM)¹
GNIJ Genetika
Dorozhny proezd. 1
Moscow 113545
Russian Federation

¹ Depositary institution having acquired the status of international depositary authority under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

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